

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

HERBERT LUTZ, individually,

Plaintiff,

vs.

SAFEWAY, INC., a non-governmental  
corporation, and DOES 1-5,

Defendant.

No. 21-2-11279-6 SEA

COMPLAINT

I. PARTIES

1.1 Plaintiff Herbert Lutz currently resides in Kirkland, King County, Washington.

1.2 At all material times herein Defendant Safeway, Inc. owned and operated the Safeway Store located at located at 15000 NE 24<sup>th</sup> St, Redmond, WA 98052 located in Redmond, King County, Washington. Said defendant is believed to have paid all licenses and fees to date and continues to do business in King County, Washington.

1.3 Parties Does 1 - 5 are unknown to Plaintiffs at this time and they are therefore sued under fictitious names. These Defendants may have caused the damages to Plaintiffs by their own tortious conduct, including acts or failures to act in, whether individually, in concert with other defendants or vicariously.

1.4 The acts and omissions giving rise to this cause of action occurred on the subject  
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1 premises, a Safeway grocery store owned and operated by the defendants, located at 15000 NE  
 2 24<sup>th</sup> St, Redmond, WA 98052 located in Redmond, King County, Washington where defendant  
 3 was conducting business.

4  
 5 1.5 Jurisdiction and venue are proper in King County Superior Court.

## 6 **II. FACTS**

7 2.1 On November 24, 2018, plaintiff Herbert Lutz was on the subject premises as a  
 8 business invitee.

9 2.2 Plaintiff Lutz was coming around the corner of an aisle with his shopping cart  
 10 when he struck a box of unstocked product which defendants left unattended, unmarked,  
 11 without warning of its existence.

12 2.3 As a result, plaintiff Lutz fell face first into the cart, hitting his head on the  
 13 grocery cart, and also landing on his right hip and right shoulder.

14 2.4 Plaintiff Lutz suffered serious injuries from this incident and was unable to get  
 15 up after the fall.

16 2.5 As a result, Redmond Fire Department EMTs were called who arrived and  
 17 transported plaintiff Lutz to Overlake Medical Center's Emergency Department.

18 2.6 Defendant's employee(s) were acting within the course and scope of their  
 19 employment at all times herein.

## 20 **III. CLAIMS AND CAUSES OF ACTION**

21 3.1 As an owner and/or occupier of the premises and operator of a grocery store,  
 22 Defendant owed to invitees such as plaintiff Lutz a non-delegable duty to exercise ordinary care  
 23 for their safety. This includes the exercise of ordinary care to maintain in a reasonably safe  
 24 condition those portions of the premises that the invitee is expressly or impliedly to use or might

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1 reasonably be expected to use.

2  
3 3.2 Defendant was negligent and failed to exercise ordinary care in the creation,  
4 operation and maintenance of its store. The defendant, individually or through their agents,  
5 employees, subcontractors or other persons or entities, created the unsafe condition by leaving  
6 the unstocked box of product unattended on the floor.

7  
8 3.3 The nature of Safeway's business and their methods of operation are such that  
9 the existence of this unsafe condition was reasonably foreseeable to the defendant.

10 3.4 Defendant failed to have adequate procedures in place to keep their premises free  
11 from foreseeable unsafe conditions and failed to properly maintain a safe premises by allowing  
12 the box of unstocked product to remain in a pedestrian path.

13  
14 3.5 Defendant failed to have adequate procedures in place to adequately warn  
15 invitees such as plaintiff Lutz of the unsafe condition which caused his fall and the resulting  
16 injuries.

17  
18 3.6 Defendants are vicariously liable for the negligent acts and omissions of its  
19 employees acting within the course and scope of their duties.

20 3.7 As a direct and proximate result of defendant's negligence and/or their  
21 employees, both vicariously and directly, as described above, plaintiff Lutz suffered serious  
22 personal injuries, incurred medical bills, lost wages, pain and suffering, disability, loss of  
23 enjoyment of life, and emotional distress. Additionally, Plaintiff may, in the future, incur  
24 additional medical bills and endure additional pain and suffering, disability, loss of enjoyment  
25 of life and emotional distress.  
26  
27

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3.8 All of the foregoing allegations of fact and law are hereby alleged and asserted against any unknown entity, hereby referred to as Defendants Does 1 - 5. These defendants may have caused the damages to plaintiff by their own tortious conduct, including acts or failures to act, individually, vicariously, or in concert with other defendants, including but not limited to failing to maintain the subject premises in a safe condition or warn of the unsafe condition.

#### IV. REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against the defendant as follows:

4.1 Plaintiff has incurred non-economic damages as shall be shown at the time of trial, including, but not limited to, past, present and future pain and suffering, disability, emotional distress, and such other general damages as shall be shown at trial.

4.2 Plaintiff has also incurred economic damages, as shall be shown at the time of trial, which include, but are not limited to, past, present and future medical bills, wage loss, out of pocket expenses, mileage and other special damages or as shall otherwise be shown at trial;

4.3 For all costs and disbursements;

4.4 For reasonable and actual attorney's fees;

4.5 For pre-judgment and post-judgment interest; and

4.6 For such further and other relief as the Court deems just and equitable.

DATED this 14 day of July, 2021.

  
John J. Polito WSBA #18150  
Attorney for Plaintiff

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